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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 2964 of 1991

Dr. Kamlesh Mishra

-Versus-

Guru Ghasi Das Vishwavidyalaya & others

Post for order on 6th February, 2006.

Sd/-
Satish K. Agnihotri
Judge

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 2964 of 1991

Petitioner		Dr. Kamlesh Mishra, S?O Dr. O. N. Mishra, R/o B-38, Kantinagar, Bilaspur.
	Versus	
Respondents	1.	Guru Ghasi Das Vishwavidyalaya, Bilaspur, through Registrar.
	2.	Chancellor, Guru Ghasi Das Vishwavidyalaya, Rajbhavan, Bhopal.
	3.	Ku. Anupama Sinha, D/o Meghnath Sinha, Lecturer, Political Science, Guru Ghasi Das Vishwavidyalaya, Bilaspur.

Shri Ranbir Singh Marhas, counsel for the petitioner.

Shri Ashish Shrivastav, counsel for the respondents No. 1 and 2.

Shri Rajendra Tiwari, Senior Advocate with Shri Amit Verma, Advocate for the respondent No.3.

ORDER

(6th February, 2006)

The following order of the Court was passed by **Satish K. Agnihotri, J.**

1. The present petition seeks for quashing of the appointment order of the Respondent No.3 and further direction against the Respondent No.1 to appoint the petitioner as per the advertisement dated 15th May, 1986 (Annexure P/5).

2. According to the petitioner, the petitioner along with the Respondent No.3 and others applied for appointment to the post of Lecturer in Political Science in the Respondent No.1 University, pursuant to the advertisement dated 15th May, 1986 (Annexure P/5). The Respondent No.3 was selected for appointment without having the requisite qualification as prescribed in the said advertisement dated 15th May, 1986. It was further stated by the petitioner that the petitioner was

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having Ph.D. degree in Political Science and the Respondent No.3 did not have any degree of the said standard. It was further stated that the petitioner was much superior in merit and was also having teaching experience, therefore, the appointment of the Respondent No.3 was illegal, irregular and discriminatory. The petitioner contended for quashing of the order of appointment passed in favour of the Respondent No.3.

3. Shri Rajendra Tiwari, learned Senior counsel with Shri Amit Verma, learned counsel appearing for the Respondent No.3 stated that the relevant advertisement was not dated 15th May, 1986 but dated 8.2.1988 (Annexure R-3/1), pursuant to which, applications were made and the Respondent No.3 was appointed by the selection committee after following proper selection process. According to the learned counsel for the Respondent No.3, the introduction of new revised pay scale on the basis of the Mehrotra Committee, which was accepted by the Govt. of India and all the State Governments, including the State of Chhattisgarh and the respondent University, the minimum qualification for appointment to the post of Lecturer in the pay scale of Rs. 2200-4000 was master's degree in the relevant subject with at least 55% marks and equivalent and good academic record. In the present case neither the petitioner nor the Respondent No.3 had doctorate degree at the time of making application for appointment to the post of Lecturer in Political Science. The last date for making applications was 7.3.1988 and the petitioner obtained Ph.D. degree on 28.6.1988 and the Respondent No.3 obtained M. Phil degree on 22.9.1988.

4. Learned counsel for the Respondent No.3 has cited the advertisements (Annexure R-3/26) of various Universities namely North Eastern Hill University, Shilong, Jawaharlal Nehru University,

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New Delhi, Manipur University Canchipur, Imphal etc. for appointment to the post of Lecturer/Assistant Professor. All the Universities adopted the essential qualification prescribed by the University Grants Commission for appointment to the post of Lecturer. As per the University Grants Commission, the essential qualification for appointment of 'Lecturer' is "Consistently good academic record with at least 55% marks and Master's degree in the relevant subject or its equivalent grade and the preference would be given to the candidates who are M.Phil/Ph.D." It is therefore established that the minimum qualification was good academic record with at least 55% marks in the master's degree in the relevant subject or its equivalent grade. The research degree like M.Phil/Ph.D. was desirable qualification for the purpose of giving appointments.

5. Guru Ghashi Das University revised Ordinance also prescribes for qualification, which reads as under:-

> "C. LECTURER: (1) Master's Degree in the subject with at least 55% as the Post Graduate Examination together with at least 50% marks in Graduate Examination with the subject applied for from a recognized University.
>
> (2) A Doctoral Degree/M.Phil in the subject.
>
> Provided that the Executive Council on the recommendations of the Selection Committee shall have the power to relax any or all the conditions laid down in para-I ABC except for the minimum required percentage in the Post-Graduate and Under-Graduate Examinations in the interest of Teaching/Research in cases of scholars having extra-ordinary repute the fields of the subject concerned."

6. Learned counsel for the Respondent No.3 has relied on the decision of the Supreme Court in the case of **Krishan Kumar, Assistant Secretary, Market Committee, Bhiwani, (Haryana) Vs. Haryana State Agricultural Marketing Board, Panchkula**[1] in support of his

[1](1997)-4 S.C.C. 577

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contention that the crucial date for possession of eligibility qualification is the date of the application for selection. In the present case the petitioner as well as the Respondent No.3 both had the essential qualification i.e. M.A. with 55% marks in relevant subject but did not possess the research degree i.e. M.Phil/Ph.D. Learned counsel submitted that the academic record of the Respondent No.3 was much superior in Political Science as compared with the petitioner and the emphasis on essential qualification is good academic record. Learned counsel has produced a chart indicating comparative academic qualifications and academic records of the petitioner as well as that of the respondent No.3 in Annexure R-3/23 which is quoted as under:-

Srl. No.	Level	Respondent No.3	Petitioner
1.	Higher Secondary	78% Total, 1st Class firsts in MP State in the merit list of Arts Faculty, with 82.5% marks in the concerned subject-'Civics'	Below 50% with Science Subjects
2.	Graduation	65.3% with first class Third in merit list of the University, with 70% marks in the concerned subject – Political Science	57% passed with supplementary with Science subjects
3.	Post Graduation	65.3% with first class Third in the merit list of the university	62% with first class tenth in University merit list
4.	Research	(i)MA Laghu Shodh Prabhandha (ii)During M.Phil Undertook research in the desirable area, i.e. weaker sections of the society specially the	Could not undertake research at post graduate level as only the

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		tribal. Later on, on the basis this research work, published/presented two and communicated one research papers for publication within one year of completing M.Phil During M.Phill, offered Tribal Development as a special paper and in the advertisement the preference was for those who had done studies in the areas related to the weaker sections of the society, specially the tribal. (As a Relevance, Ph.D. was also awarded in June 1993 in the areas related to studies of Tribals).	students securing at least 60% marks in M.A. Previous were allowed to undertake it and he could secure only 52% marks. Awarded Ph.D. on 26.8.88 not in the area desirable in advertisements.

7. Learned counsel further contended that there was unexplained and inordinate delay in filing this petition as such this petition deserves to be dismissed on the ground of latches. The counsel has relied on decisions of Supreme Court in **Jagdish Narain Maltiar Vs. The State of Bihar and others**[2], and **P. S. Sadasivaswamy Vs. State of T.N.**[3].

8. Shri Ashish Shrivastava, learned counsel appearing for the Respondents No. 1 and 2 adopted the submissions made by learned counsel for the Respondent No.3.

9. I have heard learned counsel for the parties and perused the records appended to the pleadings.

[2]AIR 1973 SC 1343, [3]AIR 1974 S.C. 2271

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10. The petitioner along with Respondent No.3 and other eligible candidates had applied pursuant to the advertisement dated 8.2.1988 (Annexure R/1), not the advertisement dated 15.5.1986 (Annexure P/5) as stated by the petitioner. The essential qualification prescribed in the advertisement dated 8.2.1988 is as under:-

Qualification:

a) Essential : As prescribed by the University Grants Commission, New Delhi for Professor, Reader and Lecturer in the Universities.

b) Desirable:

i) For Professor and Lecturer in Psychology, Political Science:-

Preference shall be given to candidates specialized in or having experience or research and studies in the field of weaker section of society particularly tribals, Harijans and women, and in rural development."

11. Before the advertisement dated 8.2.1988 was published, the State Government including the respondent/University adopted the revised pay scale as recommended by the Mehrotra Committee wherein the minimum qualification for appointment to the post of Lecturer in the pay scale of Rs. 2200-4000 was Master's degree in the relevant subject with at least 55% marks or its equivalent grade and good academic record. Research degree i.e. Ph.D./M.Phil was desirable qualification. It is clear even from the explanation in the appendix to the letter dated 17.6.1987 (Annexure R-3/15) regarding the Scheme of Revision of Pay Scales of Teachers in Universities and Colleges- 1986 and other Measures for Maintenance of Standards in Higher Education, that even Lecturer will be eligible for placement in senior pay scale of Rs. 3000-5000 if he/she has:

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(a) Completed 8 years of service after regular appointment or has reached a basic pay off Rs. 2800/-, whichever is earlier;

(b) Obtained a M.Phill or Ph.D. degree as the case may be, or has to his/her credit research work of equivalent standard;

(c) Attended two refresher courses/summer institution each of at least four week's duration and

(d) Consistently satisfactory performance reports.

This is further evident from the advertisements issued by the other Universities. Hence, possessing Ph.D./M.Phil degree is an essential qualification for grant of increments and better pay scale, not the essential required qualification for appointment to the post of Lecturer. Admittedly, the petitioner and the Respondent No.3 had essential qualification at the time of making application i.e. before 7.3.1988 for appointment to the post of Lecturer but the Respondent No.3 had better academic records as she has 78% marks in higher secondary school examination with 82.5% marks in the concerned subject, 63.5% marks in graduation with 70% marks in the concerned subject and 65.3% marks in post graduation, when the petitioner had less than 50 marks in Science subject in higher secondary school examination, 57% marks in science subject in graduation and 62% marks in post graduation. The respondent No.3 had better research work than the petitioner. The selection committee, it appears, has gone through the entire academic records of both the candidates before selecting the Respondent No.3 for the post of appointment. There is no reason to interfere with the selection process and the results thereafter made by the experts in the field.

12. The Supreme Court in **Ramesh Kumar Choudha & others Vs. State of M.P. and others**[4] clearly held that the qualification obtained after the cut off date does not entitled the candidate for consideration on the basis of qualification acquired after the cut off date.

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13. The Supreme Court in **Dalpat Abasaheb Solunke etc. V. Dr. B. S. Mahajan etc.**[5] in para -9 held as under:-

> "9. .....It is needless to emphasise that it is not the function of the Court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The Court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection, or proved mala fides affecting the selection etc. It is not disputed that in the present case the University had constituted the Committee in due compliance with the relevant statutes. The Committee consisted of experts and it selected the candidates after going through all the relevant material before it. In sitting in appeal over the selection so made and in setting it aside on the ground of the so called comparative merits of the candidates as assessed by the Court, the High Court went wrong and exceeded its Jurisdiction."

14. In view of the aforesaid reasons it is not necessary to go into the question of filing this petition after a period of three years from the date, the cause of action arose.

15. For the reasons stated above and the authoritative pronouncements of the Supreme Court in the decisions cited above, the petition is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Thakur

[4](1996) 11 S.C.C. 242, [5]AIR 1990 S.C. 434